LEE SUAT HONG (M.W.)

v.

TEO LYE (M.W.)

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
AP RAJAH J
SK CHAN JC
[CIVIL APPEAL NO. 49 OF 1986]
25 FEBRUARY 1987

LANDLORD AND TENANT: *Claim for vacant possession with mesne profits - Equitable estoppel - Representation that tenant and family can remain in occupation for as long as they wish - Trial Judge's finding of fact as opposed to an inference - Whether it can be disturbed.*

The plaintiff alleged that the defendant had been in possession of No. 38A, Lorong Puntong, Singapore ("No. 38A") as plaintiff's tenants. The defendant claimed to be entitled to continued possession by virtue of equitable estoppel because the predecessor-in-title of No. 38A represented to the defendant and her family that they would be allowed to erect their own house on No. 38A, and remain in occupation for as long as they deem fit.

The trial Judge found on the evidence, that the defendant did not know the terms of the occupation of No. 38A, and further found that no expectation that the defendant could stay at No. 38A permanently had been created, gave judgment in favour of the plaintiff. The defendant appealed to the High Court, and the High Court allowed the appeal and held that the trial Judge erred in concluding that no expectation was created by the plaintiff's predecessor-in-title that the defendant and her family could reside at No. 38A permanently. Hence this appeal.

Held:

[1] The trial Judge made a finding of fact as opposed to drawing of an inference, based on oral testimony after having considered the evidence of the witnesses and formed his opinion on their credibility. The finding ought not to be disturbed. The Appeal Court would be extremely reluctant to reject a finding by a Judge of a primary fact.

[2] It follows therefore that no expectation that the defendant be permitted to stay at No. 38A permanently had been created.

[3] The plaintiff is entitled to possession of the premises upon payment of $24,207 to the defendant.

Case referred to:
Goh Leng Kwang v. Teng Swee Lin [1974] 2 MLJ 5

JUDGMENT

Wee CJ, A.P. Rajah, S.K. Chan JC:

This appeal arises for a claim by the plaintiff/appellant against the defendant/respondent for possession of premises known as No. 38A, Lorong Puntong, Singapore, together with arrears of rent and *mesne profits* from 1 February 1983, and costs.

The plaintiff alleged that the defendant had been in possession of the premises as the plaintiff's tenant and that the tenancy had been duly determined by notice to quit expiring on 31 January 1983.

The defendant claimed to be entitled to continued possession of the premises on the ground that the plaintiff was estopped from denying the defendant's right to remain in occupation of the premises for as long as the defendant and her family deemed fit.

The defence of estoppel is based on the allegation that the plaintiff's predecessor in title of the present premises (38A) had represented to the defendant and her family that if they were to give up possession of Lot 234, Mukim 15, of which the defendant claimed to have been protected tenants under the Control of Rent Act, the defendant and her family would be allowed to erect their own house on the present premises and to remain in occupation for as long as they deem fit.

The defendant further alleged that relying on this representation, the defendant and her family gave up possession of Lot 234, Mukim 15, moved to 38A, erected their own house on it and incurred expenses in reclaiming part of the premises which was then swampland.

In substance therefore the defendant's contention was that an equitable estoppel had been established creating an equity in her favour which could only be satisfied by permitting her to stay at 38A permanently. The defendant also argued that alternatively, the equity could be satisfied if plaintiff were to pay her $80,000 being the costs of resettling her in a 4-room HDB flat.

The plaintiff denied that any expectation that the defendant could stay at 38A permanently, had been created, However, the plaintiff did not dispute that he defendant, having expended money in building the house at 38A with the then owner's consent, did possess an equity which had to be satisfied before the plaintiff could obtain possession. The plaintiff contended that this equity would be satisfied if the defendant was compensated for the replacement cost of the house. This replacement cost was valued at $24,207 less 25% depreciation for age, by a valuer whose appointment had been agreed upon by both parties. The plaintiff was prepared to pay the defendant the full replacement value of $24,207 without any deduction for depreciation.

The trial Judge found on the evidence before him that the defendant did not actually know the terms of the occupation of 38A. The trial Judge was also of the view that the defendant was not a protected tenant of Lot 234 as pleaded. In the circumstances the trial Judge found that no expectation that the defendant could stay at 38A permanently had been created.

The trial Judge then ordered the plaintiff to pay the defendant $24,207 being the replacement cost of the defendant's house at 38A before the plaintiff could recover possession. The trial Judge rejected the defendant's claim for $80,000 compensation in satisfaction of her equity, so that she could move to a 4-room HDB flat. In his view the compensation of $24,207 was fair and reasonable.

The defendant appealed to the High Court and succeeded in her appeal. The High Court in allowing the appeal held that:

(a) the trial Judge had erred in concluding that no expectation was created by the plaintiff's predecessor in title that the defendant and her family could reside at No. 38A permanently;

(b) the defendant had proved on the balance of probabilities that the circumstances of the case established the equitable estoppel alleged by her; and

(c) that the equitable estoppel protected the defendant and her family's occupation of the premises permanently.

The Court further expressed the view that even if the plaintiff were to be entitled to possession, the extent of defendant's equity which plaintiff would have to satisfy, would be the cost of resettling the defendant and not just the replacement cost of the house built. The Court accepted the defendant's submission that the cost of resettling the defendant would be $80,000.

The plaintiff being dissatisfied with the High Court's decision appealed and we allowed the appeal and restored the decision of the trial Judge.

In our view, in cases such as this where the defendant raises equitable estoppel to restrict the plaintiff from exercising his legal rights as landowner, the proper approach is to inquire first, whether any equitable estoppel exists, and if so, the extent of the equity established by the estoppel, before next considering how best that equity may be satisfied.

Whether there is an equity and its extent will in the normal case, depend simply on the initial conduct said to give rise to the equity, although the Court may have to decide how having regard to supervening circumstances, the equity can best be satisfied. If the equity so requires, the Court may declare the defendant to be entitled to possession until his outlay is repaid, or even for so long as he wishes.

With regard to the creation of the estoppel, the general principle is that an estoppel arises where one party (A) makes a representation or promise to another party (B) intending (B) to act in reliance on the representation or promise, and (B) does so act to his detriment. (A) will then be estopped from acting inconsistently with his representation or promise.

In this particular case the uncontrovertible facts show that:

(a) prior to moving to the present premises (38A), the defendant and her family were staying at Lot 234 which belonged to the defendant's elder sister, one Soh Thow Neo;

(b) the house at 38A was built by the defendant's late husband with the permission of the then owner of the land; and

(c) the defendant and her family had been residing at 38A from 1956 or thereabouts.

However, the crucial fact in dispute was the nature of the representation or promise made to the defendant and her family which encouraged or induced them to move to 38A and expend money in building a house on a land which did not belong to them and thereafter to stay on the premises.

On this point the trial Judge had made a finding of fact based on oral testimony, after having considered the evidence of the witnesses and formed this opinion on their credibility. We are unable to say that on the evidence before him the trial Judge's finding on this crucial fact was wrong, and we are of the opinion that that finding ought not, on well established principles, to have been disturbed.

The finding of fact in question in this present case relates to a finding of a specific fact (i.e. whether the representation as alleged by the defendant had been made) and not to the drawing of an inference. A distinction must be drawn between a Judge's finding of a specific or primary fact based on conflicting testimony, and the inferences to be drawn from undisputed facts of from facts deposed to by witnesses and found by the Court. While an appellate Court might be more willing to form an independent opinion upon the proper

inference to be drawn, it would always be extremely reluctant to reject a finding by a Judge of a primary fact deposed to by witnesses especially when the finding is based on the credibility or bearing of a witness. As has been said by this Court in *Goh Leng Kwang v. Teng Swee Lin* [1974] 2 MLJ 5, at 8,

> In the final analysis it was for the trial Judge to balance the probabilities and to evaluate the weight of evidence on either side and it is not for this Court to do so.

We would therefore restore the trial Judge's finding that no expectation that the defendant be permitted to stay at 38A permanently had been created. This does not however mean that plaintiff should be entitled to an order for possession without more. At the very least, and this the plaintiff does not dispute, the defendant having expended money in building her house on the premises with the then owner's consent, there is an equitable estoppel or an estoppel by acquiescence operating in favour of the defendant, thereby creating in her an equity which has to be satisfied before plaintiff can recover possession.

On the basis of the trial Judges' finding, this equity obviously cannot extend to protecting the defendant's occupation of 38A permanently. Neither would it therefore require that defendant should be compensated with the costs of finding alternative accommodation in order that the equity may be satisfied.

On the evidence the extent of the defendant's equity was merely to protect her from eviction without being compensated for the money expended in erecting the house. The defendant's equity can therefore be satisfied if she were so compensated.

As it was common ground that the replacement cost of the house has been valued at $24,207, we therefore restored the trial Judge's order that the plaintiff be entitled to possession of the premises upon payment of $24,207 to the defendant. We further ordered that the defendant vacate the premises by 31 May 1987.

Also found at [1987] 2 CLJ 280